
(1994) 09 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 4686 of 1993

Orissa Forest Development Corpn. and Another	APPELLANT
Vs	
Regional P.F. Commissioner	RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (1995) 71 FLR 338 : (1995) 1 LLJ 936 : (1995) 1 OLR 116

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S.K. Patanik and S. Pradhan, for the Appellant; A.B. Mishra, Senior Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The initiation of a proceeding u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19) of 1952 and levy of penalty by the Provident Fund Commissioner are being challenged in this writ application. The proceeding in question was initiated in 1992 for the default committed during the period 1971 to 1980 and then 1987 to 1989. The main ground on which the petitioners assail the initiation and levy of damages is that even though no period of limitation has been prescribed u/s 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"), but the same not having been exercised within a reasonable period, the initiation is bad in law and, therefore, the levy must be struck down. In support of this contention reliance has been placed on the Bench decision of this Court in OJC No. 503 of 1991 (disposed of on April 7, 1993). In the aforesaid case relying on the decision in the case of Mansaram Vs. S.P. Pathak and Others, this Court came to the conclusion that initiation of a proceeding after lapse of fifteen years must be held to be an unreasonable lapse of time and it vitiates the initiation as well as the levy of damages and penalty u/s 14B of the Act.

2. The Regional Provident Fund Commissioner who has been arrayed as the opposite party has filed a counter affidavit taking the stand that Section 14B of the Act does not provide for any period of limitation and the liability being a continuous one on account of default on the part of the employer to make the payment, the Provident Fund Commissioner is entitled to levy damages u/s 14B of the Act.

3. In view of the rival stand of the parties, the question that arises for our consideration is whether in the facts and circumstances of the present case, the initiation of the proceedings and the consequential levy should be quashed by his Court on the ground that there has been gross delay on the part of the authority in initiating the proceeding. The Division Bench decision on which the learned counsel for the petitioners places reliance no doubt fully supports the contention of the petitioners. But Mr. Misra appearing for the Union Government vehemently argues that the aforesaid Division Bench decision has not taken note of the decision of the Supreme Court in the case of *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, and also several provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952., which make the decision vulnerable and the decision requires a reconsideration. According to Mr. Misra, the decision of the Supreme Court in *Mansaram's case* (supra) will have no application since in that case it is the power of the revisional authority that was being considered in the context of whether a suo motu revision could be entertained after lapse of sufficient length of time. According to Mr. Misra, the provision contained in Section 14B of the Act merely provides for affording an opportunity to be heard and application of principle of natural justice. Once that is done, the initiation as well as the levy :annot be struck down on the ground of delay in the matter of initiation specially when the Parliament has not provided for any period of limitation in the said section.

4. It is undoubtedly true that Section 14B of the Act itself does not provide for any limitation for initiation of a proceeding for levy of damages. But even where the statute does not provide for any limitation, it has been held in several decisions of the apex Court as well as this Court that the power should be exercised within a reasonable period. While interpreting the provisions of the Orissa Land Reforms Act as well as the Ohssa Government Land Settlement Act and also under the Orissa Estates Abolition Act, where no period of limitation has been provided for exercise of power of suo motu revision, this Court has held that it must be exercised within a reasonable period, as otherwise the exercise of power would be vitiated and what would be a reasonable period would depend upon the facts and circumstances of the case under consideration. In *Mansaram's case* (supra) on which the earlier Division Bench of this Court relied upon, the apex Court clearly observed that when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. According to the learned Senior Standing Counsel what has been stated in *Mansaram's case* while examining the revisional power of an

authority under statute cannot have any application to a provision where the original authority is exercising his power, as in the present case u/s 14B. We are unable to accept this contention of the learned Senior Standing Counsel. The aforesaid observation of the apex Court should apply in all fours in respect of exercise of power by an authority under a statute where no limitation has been provided for. In the other case on which the learned Senior Standing Counsel places reliance, namely *Organo Chemical Industries Cases* (supra), the question of initiation of a proceeding u/s 14B and the consequential levy of damages thereon on the ground of limitation had not been raised, considered or answered. In that view of the matter, the said case does not decide the point in issue.

5. In course of hearing learned Senior Standing Counsel brought to our notice some decisions of other High Courts taking a contrary view, but so far as this Court is concerned, no contrary view has been placed before us. A Bench decision of this Court under law of precedent is binding on the latter Division Bench unless the decision is contrary to some decision of the Supreme Court or the Court considers it appropriate that the matter should be decided by a larger Bench in view of any infirmity in the same. But on examining the Bench decision of this Court in OJC No. 503 of 1991 we do not find any apparent infirmity which requires a re-consideration by a larger Bench and, therefore, the Bench decision is binding on as under the law of precedent. The period of default is ranging from 1971 to 1980 and 1987 to 1989 and the initiation of the proceeding is in the year 1992 and no justifiable reason has been indicated for this gross delay on the part of the Commissioner in initiating the penalty proceeding. In that view of the matter, the ratio of the earlier Bench decision of this Court in OJC No. 503 of 1991 squarely applies. We would accordingly quash the order of levy of penalty under Annexure-3 as well as damages under Annexure-4 and allow this writ application. There will, however, be no order as to costs.